

**BRIEF IN SUPPORT OF PETITION FOR
WRIT OF CERTIORARI.**

Opinions of the Court Below.

The District Court's opinion is contained in the record, pages 83 to 86. The opinion of the Fifth Circuit Court of Appeals is contained in the record, pages 96 to 99.

Jurisdiction.

Jurisdiction is claimed for the reason that this is a seamen's case in Admiralty where certain members of a crew of the steamship "YOUNGSTOWN" were denied half of their earned wages, and half of their earned overtime because they left the ship after a foreign voyage, upon the return of the ship to the Port of Tampa, Florida, and because of the breach of Articles on the part of the ship operators.

Judgment of the Fifth Circuit Court of Appeals dismissing libellants' claim is in direct conflict with the decisions of the *Second Circuit* on the same subject matter, and also with the decision of the Supreme Court of the United States in the following cases:

O'Hara, et als., v. Luckenbach Steamship Company, Inc., 46 S. Ct. 157, 269 U. S. 364;

Westhoff v. Hawaiian Sugar Company, 79 Fed. (2) 124, (*Second Circuit*).

Statement of the Case.

Libellants were members of the crew of the SS. "YOUNGSTOWN" who made a trip under Shipping Articles to various Ports in Europe and then returned to Tampa, Florida.

Upon their return to Tampa, they demanded their earned wages and demanded to be released from the ship.

The Captain of the ship gave them half of their earned wages, and half of their overtime which was earned, but refused to pay them the balance of their earned wages or their overtime and classed them as "deserters". This money has never been paid.

These men are claiming the balance of their earned wages, that is, the one half withheld from them, and the balance of their earned overtime and assert that they are not deserters, and that they had a right to quit ship because the Steamship Officers had breached the Articles, by compelling the oilers to break watches, and compelling one of the oilers to cease doing his work as an oiler but to take on another job as deck engineer which he did for fourteen days; that the other oilers were therefore compelled to work instead of eight hours per day, were compelled to work twelve hours per day in violation of the law, and in violation of the jurisprudence as set out in the *O'Hara-Luckenbach case, supra*.

Argument.

We believe that seamen are wards of the Admiralty, and have been so considered from time immemorial, and that the laws of the United States are made specially to protect them, and especially as to their wages.

This is a case where the wages were arbitrarily taken from them, and afterwards they were classed as deserters. (A mere pretext).

If they were really deserters then, no salary or wages or overtime whatsoever should have been paid them. The fact that one half of their wages, and one half of their earned overtime, was paid them precludes the argument of the defendant corporation that they were deserters.

We believe that they had a right to quit ship because the Articles were breached, and watches of the various oilers were broken, and the oiling of the ship had to be done by two oilers. The Court of Appeals admits that watches were broken (R. p. 106).

We further say that even though they did not assign this as a reason for leaving the ship, still if and such conditions did exist, then they still had a right to leave the ship and not be declared deserters.

"It is immaterial that a seaman entitled to his discharge, wages, and penalty for violations of statutes by the vessel did not assign such violation as his reason for leaving the ship."

So. Pacific Co. v. Hair, 24 Fed. (2) 94.

"Sailors must be divided into watches of equal or approximately equal numbers, notwithstanding there may not be sufficient work to keep the night watch busy, and where watches are not so constituted a seaman is entitled to discharge and pay earned, in view of the long established meaning of the term 'watch', and the distinction between the sea watch and anchor watch."

O'Hara, et als., v. Luckenbach SS. Co., 46 S. Ct. 157, 269 U. S. 364.

"Where overtime had been required of members of a crew, and watches broken, that, and in that event

only they were entitled to discharge. This is true although they may assign another reason for leaving the ship."

Westhoff v. Hawaiian Sugar Co., 79 Fed.
(2) 124.

Conclusion.

We respectfully urge that this case is peculiarly one calling for exercise by this Court of its supervisory powers, in order that an injustice may not be done to many seamen and for the benefit of all seamen, and for uniform jurisprudence on the question of right to wages; and particularly for the benefit of these libellants who are wards of the Admiralty and who have been unjustly and illegally deprived of their hard earned wages and overtime.

ALEX. W. SWORDS,
Attorney for Petitioner.

R. A. DOWLING,
Of Counsel.